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The Impact of the Class Action Fairness Act of 2005: Third Interim Report to the Judicial Conference Advisory Committee on Civil Rules

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This is the third in a series of interim reports that the Federal Judicial Center has prepared for the Judicial Conference Advisory Committee on Civil Rules on the impact of the Class Action Fairness Act of 2005 (CAFA) (Pub. L. 109-2, 119 Stat. 4 (2005)) on the resources of the federal courts. The Advisory Committee, acting in consultation with the chairs of the Judicial Conference committees on the Administration of the Bankruptcy System, Court Administration and Case Management, Judicial Resources, Federal-State Jurisdiction, and Rules of Practice and Procedure, had asked the Center to perform this study.

The overall study is designed to examine three phases of class action activity: filing and removal of cases; litigation in the district courts; and appellate review. This report presents preliminary data on the number, frequency, and types of class actions filed in or removed to federal district courts from July 1, 2001, through June 30, 2006. The report defines class action activity to include original federal filings and removed cases in which class action status is sought at any stage of the proceedings. The study includes the 88 districts that use the Case Management/Electronic Case Filing (CM/ECF) system and have created electronic docketing records for cases filed as of July 1, 2001. These districts accounted for 98% of the civil cases filed in federal district courts during that time.

The study found a 46% increase in class action activity in the study districts as a whole in the most recent six-month period for which data are available (January–June 2006) compared to the first six months of the study period (July–December 2001). Much of that increase was in federal question cases, especially labor class actions, and thus not attributable to the effects of CAFA. In the sixteen months since CAFA went into effect on February 18, 2005, however, the study found a substantial increase in class action activity based on diversity of citizenship jurisdiction. Given that one of the legislation's primary purposes was to expand the diversity jurisdiction of the federal courts, it is likely that much of this observed increase in diversity removals and, of particular interest, original proceedings in the federal courts is attributable to CAFA.

More specifically, data from the 88 courts show the following:

- There was an increase of 364 diversity filings and removals in the last twelve months for which data is available (July 2005 through June 2006) compared to the last calendar year prior to CAFA's effective date (2004).
- The average monthly numbers of diversity class actions increased from a pre-CAFA level of 27.0 cases per month to a post-CAFA level of 53.4 cases per month—or an increase of 26.4 diversity class action filings and removals per month.
- The observed increase in diversity cases resulted from both an increase in the number of removals and an even greater increase in the number of original proceedings. In the last

twelve months of the study period, original proceedings based on diversity jurisdiction outnumbered diversity removals, the reverse of the general pre-CAFA pattern.

- The increase in diversity class actions in the CAFA period is largely concentrated in cases raising state-law contract and fraud claims. The average number of monthly filings and removals in contract class actions has more than doubled after CAFA, and the average number of monthly filings and removals in fraud class actions has tripled.
- Tort class actions in the federal courts have not greatly increased in the CAFA period. The average number of monthly filings and removals in property damage cases based on diversity jurisdiction has doubled (to slightly more than four per month) after CAFA, but the average number of monthly filings and removals in personal injury class actions based on diversity jurisdiction has remained unchanged after CAFA.
- In every circuit the district courts as a whole, but not every district, have experienced an increase in diversity class action filings and removals in the CAFA period. In seven of the twelve circuits the number of diversity cases at least doubled.
- Seventy percent of the study districts experienced an increase in diversity class action filings in the last twelve months of the study period (July 2005 through June 2006), compared to the last full calendar year before CAFA went into effect (2004).

The next interim report, in fall 2007, will introduce the second phase by presenting data on class action litigation in the district courts, as gleaned from a sample of terminated cases filed before CAFA's effective date. That phase of the study will examine the entire litigation process, particularly the nature and source of law for the underlying claims; discovery; pretrial motions practice; class certification activity; and the process of reviewing settlements. That sample of cases will serve as the "before" portion of a "before and after" study of the impact of CAFA on the resources of the federal courts. The next update on CAFA filing activity is expected in the spring of 2008.

Link to [full report](#). For more information on this report, contact Tom Willging (twillgin@fjc.gov) or Emery Lee (elee@fjc.gov).

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